

EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

VENETIAN CASINO RESORT, LLC
d/b/a Venetian Resort Hotel Casino

Plaintiff,

v.

NAKED BELLY PRODUCTIONS
and
W. GREGORY CATALANO,
Defendants.

VENETIAN CASINO RESORT, LLC'S COMPLAINT

NATURE OF THE CASE

1. This is a civil action seeking declaratory, injunctive, and monetary relief for cybersquatting, trademark infringement, dilution, false advertising, and unfair competition, under the laws of the United States and the State of California as a result of Defendants' registration, ownership, and current operation of Internet casino venetian-resort.com, using the trademarks of

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JURY DEMAND

1 Venetian Casino Resort, LLC d/b/a Venetian Resort Hotel Casino (hereinafter "Venetian
2 Resort").

3
4 **PARTIES**

5 2. Plaintiff, Venetian Resort, is a corporation with its primary place of business in
6 Las Vegas, Nevada and formed under the laws of the state of Nevada.

7 3. Defendants, Naked Belly Productions and W. Gregory Catalano (hereinafter
8 individually and collectively referred to as Defendants), on information and belief, both have the
9 mailing address P.O. Box LD, Pacific Grove, California 93950.

10 **JURISDICTION AND VENUE**

11 4. This is a civil action seeking declaratory, injunctive, and monetary relief for
12 cybersquatting, trademark infringement, dilution, and unfair competition, under the laws of the
13 United States (15 U.S.C. §§ 1114(1) and 1125 *et seq.*). This Court has jurisdiction over the
14 subject matter of this action under 28 U.S.C. § 1331 (Federal Question) and 15 U.S.C. § 1121
15 and 28 U.S.C. § 1338 (Trademark Disputes).

16 5. This civil action also seeks relief under California state law. This Court has
17 supplemental jurisdiction over this relief pursuant to 28 U.S.C. § 1367, as the state law claim is
18 so related to other issues in the action that they form part of the same case or controversy within
19 the meaning of Article III of the United States Constitution.

20 6. Personal jurisdiction is proper in the San Jose Division of Northern District of
21 California because Defendants are residents of Pacific Grove (Monterey County), California.

22 7. Venue is proper in the San Jose Division of the Northern District of California
23 pursuant to 28 U.S.C. § 1391(b) and Civil L.R. 3-2. Venue is proper in the Northern District of
24 California because Defendants are residents of Pacific Grove (Monterey County), California.

FACTS RELEVANT TO ALL CLAIMS**Venetian Resort's Use and Registration of its "Venetian," "The Venetian" and "The Venetian Resort Hotel Casino" Marks and Name**

8. Venetian Resort owns and operates The Venetian Resort Hotel Casino, located in Las Vegas, Nevada, which houses the largest and most complete resort, trade convention and corporate-meeting facility in the world. The Sands Hotel, on the famous Las Vegas Strip, was imploded on November 26, 1996 to make way for The Venetian Resort Hotel Casino. Ground breaking ceremonies for the \$1.5 billion Venetian Resort complex were held on April 14, 1997. On August 24, 1998, the Venetian Resort began accepting room reservations online and by phone. On May 3, 1999, the Venetian Resort opened.

9. Venetian Resort has spent considerable resources to ensure that consumers everywhere associate the names "Venetian," "The Venetian" and "The Venetian Resort Hotel Casino" with the premiere resort and casino in Las Vegas. Located on the renowned Las Vegas Strip, Venetian Resort houses the largest and most complete resort, trade convention and corporate-meeting facility in the world. The resort features many of the famous landmarks found in Venice, Italy, including life-size replications of the Rialto Bridge, Doge's Palace, St. Mark's Square and even the 315-foot Campanile Bell Tower. As in Venice, gondoliers entertain and transport guests along a 1200-foot canal that traverses the facility. Guests may entertain themselves at the Venetian Resort's elaborate wax show, on one of its high-tech motion adventure rides or at one of the live performances offered at the Venetian's 60,000 square-foot venue. Guests can also dine at any one of the several upscale restaurants located within the Venetian Resort.

10. Today, the Venetian Resort is the world's largest hotel and convention complex which currently includes 3,036 hotel suites (each standard suite measures approximately 700 square feet); approximately 120,000 square feet of gaming floor, which includes 118 game tables and 2500 slot machines; approximately 500,000 square feet of retail space at The Grand Canal Shoppes; the luxurious 65,000 square-foot Canyon Ranch Spa Club; approximately 500,000

square feet of meeting space at The Venetian Congress Center, which will increase to over 650,000 square feet by June of 2003; and a direct link to the approximately 1.2 million square foot Sands Expo and Convention Center.

11. The Venetian Resort will ultimately occupy 63 acres on the Las Vegas Strip and offer 6000 luxurious suites and a 12 million square-foot resort, casino and convention complex. As part of the \$2.5 billion plan to complete Phase II of the resort, the Venetian will add a second 116,000 square-foot casino, which will include 100 game tables and another 2500 slot machines.

12. Venetian Resort is widely acknowledged as one of the world's leading resort, hotel and casino properties. Since its opening, the Venetian Resort has received a non-stop stream of accolades from all over the world and its trademark is widely known and identifiable. In 2001 and 2002, The Venetian Resort has been named to the prestigious "Conde' Nast Traveler's Gold List of the World's Best Places to Stay."

13. Venetian Resort's investment in the "Venetian," "Venetian Resort" and "Venetian Resort Hotel Casino" trademarks is backed by substantial capital investments.

14. Venetian Resort's rapid growth and success are due in part to an aggressive marketing approach founded on the consistent use of the "Venetian" name and theme.

15. Venetian Resort has registered the following trademarks with the United States Patent and Trademark Office:

Mark	Reg. No.	File Date	Reg. Date	Services/Goods
Venetian	2,326,994	Feb. 28, 1996	Mar. 7, 2000	Hotel and Retail Gift Store
The Venetian	2,295,362	May 4, 1998	Nov. 30, 1999	Hotel Reservations
The Venetian Resort Hotel Casino	2,350,633	Jan. 20, 1998	May 16, 2000	Casino and Gaming Services; Gaming Facilities; Entertainment, Namely, Live Musical Performances, Theatrical Productions and Comedy; Sporting Events; Health Clubs; Amusement Centers and Arcades; Providing Casino and Gaming Services by Means of Web Sites and a Global Computer Network

1 2 3 4 5	The Venetian Resort Hotel Casino	2,411,455	Jan. 20, 1998	Dec. 5, 2000	Hotels, Restaurants, Hotel Concierge Services, Bar Services, Security Guard Services, Beauty Salons, Health Spas, Massage, Catering Services; Providing Facilities for Conventions, Banquets, Social Functions, Fund Raising, and Special Events
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6 Copies of these registrations are appended as Exhibit A to this Complaint. In addition to its
7 many registered trademarks, Venetian Resort has also established common law trademark rights
8 in the "Venetian Resort" mark due to adoption and longstanding use of said mark in trade. These
9 rights at a minimum protect use related to the resort, hotel, and gaming business.

10 16. Venetian Resort invests in the "Venetian," "The Venetian," and "Venetian Resort
11 Hotel Casino" marks with extensive image advertising in all forms, including Internet, television,
12 newspaper, magazine, direct mail, and billboards. The result has made the Venetian Resort one
13 of the most recognized casino brands in the United States and the world.

14 17. Lastly, Venetian Resort makes extensive use of its "Venetian" mark on the
15 Internet itself. Venetian Resort maintains an active Internet web site presence at <venetian.com>
16 and <venetiancasino.org>. Reservations, corporate information, specials, contact information
17 and directions, and reservations are all accessible through <venetian.com>. Casino gaming,
18 which the United States Department of Justice currently views as a violation of the Wire Act, is
19 not offered at the genuine Venetian Resort Internet web site.

20 18. Venetian Resort seeks to recover a domain name that appropriates the Venetian
21 Resorts's registered marks: "The Venetian," "Venetian" and "Venetian Resort Hotel Casino."
22 This domain name, <venetian-resort.com>, offers its own casino gaming operation, as well as
23 links to other casino operations and pornographic content. *See* Exhibit B.

24 **Defendants Naked Belly Productions and W. Gregory Catalano**
25 **and their Wrongful Conduct**

26 19. Investigation of the <venetian-resort.com> registration revealed that Defendant
27 registered the offending domain name on August 30, 2000. *See* Exhibit C.
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1 20. Defendants' self-titled "Venetian-Resort Casino" Internet casino continues full-
2 scale operation to this day. See Exhibit B.

3 21. Not only does the owner of <venetian-resort.com> use a confusingly similar name
4 for the bad-faith purpose of profiting at the true Venetian Resort's expense; it also uses that
5 domain name to run an operation that would tarnish and dilute the Venetian Resort's reputation.
6 By creating the impression that the Venetian Resort itself either controls or otherwise endorses
7 the on-line gaming found at <venetian-resort.com>, the domain name intimates that the Venetian
8 Resort engages in a practice specifically defined by the United States Department of Justice as a
9 violation of federal law. In the end, the Defendants' domain name and the web site associated
10 with it threaten the true Venetian Resort's commercial viability.

11 **Defendants Naked Belly Productions and W. Gregory Catalano's**
12 **and Knowledge of Venetian Resort**

13 22. It strains credulity that Defendants registered <venetian-resort.com> without
14 knowledge of the Venetian Resort's famous marks and substantial casino operations.

15 23. Venetian Resort is located in Las Vegas, Nevada a day's drive from Defendant
16 Catalano's residence in the Northern California area. In fact, the Northern California area is one
17 of the specific markets in which Venetian Resort advertises concurrently on television, in
18 newspapers, and on billboards.

19 **Harm to Venetian Resort by Defendants Naked Belly Productions**
20 **and W. Gregory Catalano's Wrongful Conduct**

21 24. Venetian Resort has never given Defendants permission to use its trademarks.
22 Further, it has never had a business relationship or association with Defendants.

23 25. Defendants' acts demonstrate that they registered and used the <venetian-
24 resort.com> domain name in bad faith. Defendants' acts also demonstrate that they willfully
25 infringed Venetian Resort's marks.

26 26. The specifics of Defendants' bad faith and willful conduct are even more
27 pronounced when viewed in light of the state criminal penalties for operating an unlicensed
28 gaming operation. See Cal. Penal Code § 330. Yet, Defendants still established their rogue

1 Internet casino and it still operates today, thus demonstrating Defendants' unabashed bad faith
2 intent and willful conduct.

3 27. Defendants' registration and use of the domain name <venetian-resort.com> is
4 virtually identical or confusingly similar to the marks registered, owned and used by Venetian
5 Resort. As a result, the domain name bears an identical or similar appearance, sound,
6 connotation and commercial impression to the service names owned and used by Venetian
7 Resort itself. Thus, Internet users and consumers who searched for the true Venetian Resort's
8 web site by using this domain name would instead stumble upon a commercial-gaming web site
9 operated by person(s) who have no authority or relationship with Venetian Resort itself.

10 28. Defendants' bad faith and willful use of the <venetian-resort.com> domain name
11 and the "Venetian Resort" mark for their own Internet casino also creates an unfair risk of
12 diluting and tarnishing the commercial reputation of Venetian Resort's marks. First, by naming
13 the casino "Venetian Online Casino" and using the <venetian-resort.com> domain name to
14 operate it, Defendants give consumers the false impression that the true Venetian Resort either
15 operates this casino or otherwise permits or even endorses its operation. Moreover, it gives
16 consumers the false impression that they can use this Internet casino with the same level of trust
17 and confidence that they would place in Venetian Resort itself. But if consumers had an
18 unsatisfying experience using this web site, they would form an unfavorable impression not only
19 about the web site but also about the true Venetian Resort. Consequently, Venetian Resort's
20 marks, its reputation and, ultimately, its commercial viability have and will continue to suffer as
21 a result of Defendant's willful actions.

22 29. According to Marc Falcone, an analyst for Bear Stearns Companies Inc, and as
23 reported in the New York Times and Las Vegas Sun, thirty-five percent of all Internet casinos
24 either rig the games used by consumers or refuse to pay the money that consumers do win.
25 Regardless of whether the Defendants run one of these dishonest Internet casinos, the consuming
26 public will soon associate it with the web sites that do run these rogue operations. And, for its
27
28

1 part, the true Venetian Resort will again suffer the consequences, even though it has nothing to
2 do with Internet casinos in general or the Defendants' Internet casino in particular.

3 30. In the event that Defendants choose to operate in bad faith with their customers, it
4 will be the true Venetian Resort that is the unwitting victim. In an attempt to assure the public
5 that the rogue casino operates at the highest ethical level, it invokes the true Venetian Resort
6 name.

7 31. The use of Venetian Resort's marks in conjunction with an Internet casino web
8 site wrongfully suggests that Venetian Resort itself is violating the laws of the United States.
9 The United States Department of Justice presently considers Internet casinos violative of the
10 Interstate Wire Act, 18 U.S.C. § 1084, which generally prohibits gambling via the telephone.
11 Thus, the collection of Venetian Resort's trademarks could become tarnished in the minds of
12 consumers, potential investors and even prosecutors because of the erroneous (but
13 understandable) assumption that it is operating an Internet casino and thereby committing a
14 federal crime.

15 32. Defendant's unauthorized use of Venetian Resort's trademarks:

16 (a) is likely to cause confusion, to cause mistake, and/or to deceive customers and
17 potential customers of the parties, as to the origin, sponsorship, or approval of Defendants'
18 Internet casino and its other products and services, or as to some affiliation, connection or
19 association of Defendants with Venetian Resort;

20 (b) falsely designates the origin of Defendants' Internet casino and their other
21 products and services, and falsely and misleadingly describes and misrepresents facts with
22 respect to Defendants, their Internet casino name and domain name and its other products and
23 services;

24 (c) enables Defendants to trade on and receive the benefit of goodwill Venetian
25 Resort built up at great labor and expense, and to gain acceptance for Defendants' Internet
26 casino, and their other products and services not solely on its own merits, but on the reputation
27 and goodwill of Venetian Resort, its trademarks, and its products and services;

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1 (d) causes dilution of the distinctive quality and/or the famous nature of the Venetian
2 Resort's trademarks;

3 (e) unjustly enriches Defendants; and

4 (f) unlawfully removes from Venetian Resort the ability to control the nature and
5 quality of products and services provided under its trademarks and places the goodwill and
6 valuable reputation of the Venetian Resort in the hands of Defendants, over whom Venetian
7 Resort has no control.

8 33. Venetian Resort has been damaged and continues to be damaged by Defendants'
9 unauthorized and willful use of Venetian Resort's trademarks in the manner described above.

10 34. Unless the Defendants' acts are restrained by this Court, Defendants will cause,
11 and consequently will continue to cause irreparable injury to Venetian Resort and to the public
12 for which there is no adequate remedy at law.

13 **COUNT I: CYBERSQUATTING**

14 **<venetian-resort.com>**

15 **(The Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d)(1)(a))**

16 35. Venetian Resort repeats the allegations of paragraphs 1 through 34 above as if
17 fully set forth herein.

18 36. Defendants registered, trafficked in and used the domain name <venetian-
19 resort.com>, which incorporates a mark that was famous as well as a registered trademark, at the
20 time of Defendants' registration of the domain name.

21 37. The <venetian-resort.com> domain name registered by Defendants contains
22 Venetian Resort's trademarks.

23 38. Defendants' registration, trafficking and use of the domain name <venetian-
24 resort.com> was in bad faith, in that the registration, trafficking and use occurred (a) with full
25 knowledge and conscious disregard of Venetian Resort's rights its trademarks, (b) with an intent
26 to trade on Venetian Resort's vast goodwill in its marks by creating a likelihood of confusion as
27 to the source, sponsorship or affiliation or endorsement of Defendants' products and services,
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1 and (c) with an intent to financially gain from selling, leasing, or granting third parties a license
2 to use the domain name in connection with the solicitation of Defendants' gaming services.

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4 **COUNT II: FEDERAL TRADEMARK INFRINGEMENT**
(Lanham Act § 32, 15 U.S.C. § 1114(1))

5 39. Venetian Resort repeats the allegations of paragraphs 1 through 38 above as if
6 fully set forth herein.

7 40. The acts of Defendants complained herein constitute infringement of Venetian
8 Resort's federally registered trademarks for "Venetian," "The Venetian," and "The Venetian
9 Resort Hotel Casino," in violation of 15 U.S.C. § 1114(1).

10 41. The acts of Defendants complained herein have been malicious, fraudulent,
11 deliberate, willful, intentional, and in bad faith, with full knowledge and conscious disregard of
12 Venetian Resort's rights in its trademarks, and with an intent to trade on Venetian Resort's vast
13 goodwill in trademarks. In view of the egregious nature of Defendants' infringement, this is an
14 exceptional case with the meaning of 15 U.S.C. § 1117(a).

15 **COUNT III: FEDERAL DILUTION**
16 **(Federal Trademark Dilution Act, 15 U.S.C. § 1125(c))**

17 42. Venetian Resort repeats the allegations of paragraphs 1 through 41 above as if
18 fully set forth herein.

19 43. Defendants' use in commerce of the Venetian Resort's trademarks causes dilution
20 of the distinctive quality of those trademarks, in violation of the Federal Trademark Dilution Act,
21 15 U.S.C. § 1125(c).

22 44. Defendants willfully intended to trade on Venetian Resort's reputation and to
23 cause dilution of Venetian Resort's famous trademarks.

24 **COUNT IV: FEDERAL UNFAIR COMPETITION**
25 **(Lanham Act § 43(a), 15 U.S.C. § 1125(a))**

26 45. Venetian Resort repeats the allegations of paragraphs 1 through 44 above as if
27 fully set forth herein.

1 46. The acts of Defendants complained of herein constitute unfair competition in
2 violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

3 47. Defendants' unfair competition has been willful and malicious, thus making this
4 an exceptional case under 15 U.S.C. § 1117(a).

5 **COUNT V: COMMON AND STATUTORY LAW TRADEMARK, TRADE NAME**
6 **INFRINGEMENT, UNFAIR COMPETITION, DILUTION, FALSE ADVERTISING,**
7 **AND CYBER PIRACY**

(Cal Bus. & Prof. §§ 14330, 14402, 17200, 17500, 17525)

8 48. Venetian Resort repeats the allegations of paragraphs 1 through 47 above as if
9 fully set forth herein.

10 49. By their acts alleged herein, Defendants have engaged in trademark infringement,
11 trade name infringement, dilution, unfair competition, false advertising, and cyber piracy under
12 the common and statutory law of the State of California, California Business and Professions
13 Code § 14330, *et seq.*, § 14402, *et seq.*, § 17200, *et seq.*, § 17500, *et seq.*, and § 17525 *et seq.*

14 50. Defendants have intentionally deceived the public by misrepresenting that their
15 services are in some way sponsored or authorized by Venetian Resort.

16 51. Upon information and belief these acts were undertaken willfully and with the
17 intention of causing confusion, mistake or deception.

18 52. At all material times, Defendants acted in bad faith, oppressively and maliciously
19 toward Venetian Resort, with intent to injure Venetian Resort, thereby entitling Venetian Resort
20 to damages against Defendants.

21 53. The above described acts of Defendants have caused and are continuing to cause
22 irreparable injury to Venetian Resort, for which Venetian Resort has no adequate remedy at law,
23 and Defendants will continue to do so unless enjoined by this Court.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Venetian Resort prays that:

26 (a) Defendants, their agents, servants, employees, attorneys, and all those persons in
27 active concert or participation with Defendants, be permanently enjoined and restrained from
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1 using the Venetian Resort's trademarks and any other name or mark that is confusingly similar to
2 its trademarks, or any other mark or designation of Venetian Resort or its affiliates, or likely to
3 dilute their distinctive quality, including use of these marks, as part of Internet domain names or
4 e-mail addresses;

5 (b) Defendants be ordered to file with this Court and to serve upon Venetian Resort,
6 within thirty (30) days after the entry and service on Defendants of an injunction, a report in
7 writing and under oath setting forth in detail the manner and form in which Defendants have
8 complied with the injunction;

9 (c) Venetian Resort recover all damages it has sustained as a result of Defendants'
10 activities, in an as yet indeterminate amount to be established at trial, and that said damages be
11 trebled;

12 (d) An accounting be directed to determine Defendants' profits resulting from their
13 activities and that such profits be paid over to Venetian Resort and increased as the Court finds
14 to be just under the circumstances of this case;

15 (e) Pursuant to 15 U.S.C. § 1117(d), Defendant pay Venetian Resort statutory
16 damages of \$100,000 for violating 15 U.S.C. § 1125(d)(1) with regard to <venetian-resort.com>.

17 (f) Venetian Resort recover its reasonable attorney fees;

18 (g) Venetian Resort recover its costs of this action; and

19 (h) Venetian Resort recover such other relief as the Court may deem appropriate.
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Respectfully submitted,



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Dated: March 26, 2003